



United States Department of the Interior

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BUREAU OF LAND MANAGEMENT

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Instruction Memorandum No. 84-415

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To: All State Directors

From: Director

Subject: Environmental Protection Stipulation Policy for Oil and Gas Leasing

The purpose of this Instruction Memorandum is to establish a more comprehensive policy for the use of environmental protection stipulations on oil and gas leases. The policy applies to both Bureau initiated stipulations and stipulations recommended for use by other agencies. With respect to stipulations recommended by other agencies, all offices should be aware that, if the stipulations have not been cooperatively developed, discussions with the recommending agency should be made before conforming the stipulations to this policy. Also, to the extent possible, all offices are to promote the use of this policy by agencies having consent authority for lease issuance.

The need for more comprehensive policy has existed for many years, as evidenced by various State Office and regional initiatives. To date, emphasis has been placed on reducing the use of stipulations in those instances where protection of surface resources, values, uses, or users was already afforded by the standard lease terms, regulations, or formal operational orders. Attempts have also been made to bring consistency to the wording of stipulations being used by various offices. These have been worthwhile efforts that have fostered efficient use of stipulations. However, they do not constitute a formal Bureauwide stipulation policy. This directive intends to do that by defining the basic purpose for using stipulations, by clarifying the criteria for their use and by providing guidance concerning proper documentation of stipulations.

Purpose of Stipulations

The primary purpose of attaching environmental stipulations to leases is to modify for environmental protection the basic right that would otherwise be granted under the standard oil and gas lease, that is, the right to conduct surface operations on a leasehold for exploration, development, and production of oil and gas. Under the standard lease the Bureau can modify, but not deny, proposed operations to mitigate environmental impacts except under certain specific, nondiscretionary statutes such as the Endangered Species Act which do provide authority to deny operations that would cause unacceptable impacts. In cases where

surface operations would have unacceptable environmental impacts, the authority to deny operations, if not specified in a particular statute, must be established in the lease through use of stipulations. Stipulations, therefore, do not simply provide environmental protection, but, if not otherwise specifically provided for by law, allow for denial of operations within the lease and thereby minimize the potential for challenges to the lease contract.

Criteria for Use of Stipulations

Use of stipulations should be considered appropriate only when they are both "necessary" and "justifiable." To determine if a stipulation is necessary it is essential to have an understanding of the standard terms of the lease, regulations, and formal operational orders. Collectively, these existing contractual controls provide substantial latitude within which the Bureau may require modification to the siting, design, and timing of operations on leaseholds. They also provide for the Bureau to specify interim and final reclamation measures. They do not, however, allow the Bureau to require modifications to proposed operations that would prevent economic extraction of otherwise commercial deposits of oil and gas. If a lessee is to be prevented from extracting oil and gas and the prohibition is not mandated by a specific, nondiscretionary statute such as the Endangered Species Act, then stipulations are necessary and are to be used. Also, as a matter of policy, even if a lessee is to be prevented from extraction through operation of a specific, nondiscretionary statute, stipulations are to be considered necessary and are to be used.

A stipulation is "justifiable" if there are resources, values, uses, and/or users present that cannot coexist with oil and gas operations, cannot be adequately managed and/or accommodated on other lands for the duration of oil and gas operations, and provide a greater benefit to the public than that of oil and gas operations. In such cases, stipulations are justifiable and are to be used.

Documenting the Need for Stipulations

The IBLA has upheld the Bureau's use of stipulations only when the "record" contains sufficient justification (as discussed above) and indicates that less restrictive stipulations were considered but rejected as not serving to adequately protect the public interest. Precisely where in the record this documentation is to occur is left to the Bureau, however, ordinarily a Resource Management Plan should be used for this purpose. Regardless of whether oil and gas is associated with a planning issue, every plan shall contain sufficient information on surface resources, values, and users to allow areas to be identified wherein special management, and if known, specific stipulations will be necessary. Specific stipulations not identified in a plan can then be justified efficiently, largely by reference to a plan, either in the environmental assessment or in a separate worksheet accompanying the categorical exclusion review that leads to lease issuance.

Content and Wording of Stipulations

The content and accurate wording of stipulations is very important since stipulations become part of the lease contract. If the stipulations are ambiguous, potential lessees will be uncertain as to the value of the lease. Also, if poorly written, the Bureau may fail to retain, within the terms of the lease, the right to deny operations. Therefore, to the extent feasible, stipulations are to specify the reason for the stipulations, the lands involved, and the probable effect of the stipulations on lease activities. Stipulations should also include a provision for waiver in the event that circumstances or relative resource values change, or in the event that the lessee demonstrates that operations can be conducted without causing unacceptable impacts. Following are a few examples of stipulations (they are not intended to be standard stipulations that must be used).

1. The following described lands are receiving special management for (i.e., Blue Lake reservoir which is an excellent fishery and is heavily used for recreation). Operations proposed on the described lands will not be approved unless it is shown to the satisfaction of the authorized officer that the objective of such special management can still be met.
2. Sage grouse strutting grounds exist within the following described lands. The Bureau has determined that unacceptable impact to the sage grouse population would result if more than (percent) of the strutting grounds in the area of this leasehold are disturbed during a particular strutting season. If this threshold will be reached due to operations proposed on this leasehold, such operations may not be approved. This stipulation will only be in effect between (dates). It does not apply to maintenance or operation of producing wells.

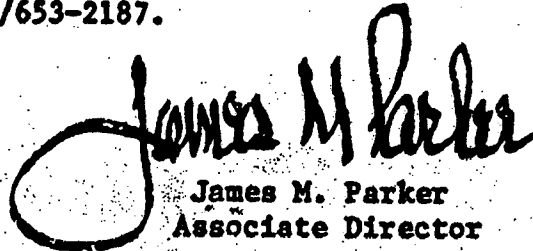
Existing Stipulations

In many cases, commitments have been made to the public to use certain stipulations. This was done through either land management plans and/or environmental review documents. Even if such stipulations are not "necessary" (as discussed above), in the interest of efficiency they may still be used. However, to the extent that they are not "justifiable," they are not to be used and the public is to be so informed through whatever formal mechanism is appropriate. Also, the content and wording of existing stipulations that continue to be used should be made consistent with the requirements of this directive at the earliest opportunity.

Information Notices

Offices may believe it valuable to transmit information at the time of lease issuance that will assist lessees in submitting acceptable plans of operations, or that concerns administrative matters relative to lease management. This can be done by attaching information notices to leases. However, there is an important distinction between information notices and stipulations. Information notices cannot involve new restrictions. Any requirements contained in information notices must already appear in the standard lease terms, regulations, or operational orders. As such, it is not necessary for the Bureau to ensure that lessees are specifically aware of the requirements contained in information notices prior to lease issuances. Lessees must, of course, be made aware of and acknowledge all stipulations prior to leasing.

Questions and comments concerning this Instruction Memorandum should be directed to Karl Duscher, 202/653-2187.



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